

The Zoning Ordinance for the Town of Fountain Hills

Chapter 2

PROCEDURES

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The Zoning Ordinance for the Town of Fountain Hills

Section 2.01 Amendments or Zone Changes

- A. Purpose.** The Council may, from time to time as public necessity, convenience, general welfare, and/or good zoning practice requires, change the district boundaries or amend, change, repeal or supplement the regulations herein established. Such change or amendment may be initiated by the Council or the Planning and Zoning Commission or by petition of one or more owners of real property within the area proposed to be affected by the change.
- B. Petitions for Amendments.**
1. Petitions for change of district boundaries or amendments of regulations shall be filed with the Community Development Office by an owner of real property within the area proposed to be changed, or by the Council or Planning and Zoning Commission. In the case of the petition filed by a party other than the Council or Commission requesting a zoning district change which includes other property in addition to that owned by the petitioner, the petition shall include the signatures of the real property owners representing at least seventy-five (75) percent of the land in the area proposed to be changed. All such petitions shall be filed on a form provided for the purpose and shall include:
 - a. A map showing the particular property or properties for which the change of zone is requested and substantially the adjoining properties and the public streets and ways within a radius of three hundred (300) feet of the exterior boundaries thereof.
 - b. A tentative development plan which shall show the following:
 - (1) Topographical description showing existing and proposed grades and drainage systems, and natural and manmade features with indication as to which are to be retained and which are to be removed or altered.
 - (2) Proposed street system.
 - (3) Proposed block layouts.
 - (4) Proposed reservation for parks, parkways, playgrounds, recreation areas and other open space.
 - (5) Off-street parking space.
 - (6) Types and uses of structures.
 - (7) Location of structures, garages and/or parking spaces.
 - (8) A tabulation of the total number of acres in the proposed project and a percentage thereof designated for the proposed structures.
 - (9) Preliminary plans and elevations of the structure types. Single-family residential subdivision are exempt from this requirement.

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- c. Reasons justifying the petition.
 - d. A true statement revealing any conditions or restrictions of record (if any) which would affect the permitted uses of the property if rezoned as requested and the date or dates (if any) of expiration thereof.
 - e. Such photographs, drawings, and other supporting documents (if any) as the applicant may desire to present.
 - f. Payment of a filing fee in an amount established by a schedule adopted by resolution of the Council and filed in the offices of the town clerk. No part of the filing fee shall be returnable. Payment of filing fee shall be waived when the change or amendment is initiated by the Council or the Commission or when the petitioner is the town, school district, special purpose district, county, state or federal government.
- 2. Under certain circumstances where the Community Development Director finds that the nature of the permitted or special use is such that it would be unnecessary or economically unfeasible for the applicant to prepare a plan in accordance with above stated requirements, the Community Development Director may waive certain of the above requirements, but in all cases the applicant will be required to prepare and submit some type of site plan drawn to scale.
 - 3. Upon receipt of a complete application for amendment, the Community Development Director shall forward the application to the Planning and Zoning Commission.
 - 4. Any plan approved by the Community Development Director under the provisions of section 2.04 which requires a zoning change must substantially conform to the tentative plan submitted as part of the petition for a change of district boundaries.
- C. Hearings.** When the Planning and Zoning Commission holds a public hearing concerning the zoning ordinance, notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least fifteen (15) days before the hearing in the following manner:
- 1. The notice shall be published at least once in a newspaper of general circulation published or circulated in Fountain Hills. A posted notice shall be printed so that the following are visible from a distance of one hundred (100) feet: the word "ZONING", the present zoning district classification, the proposed zoning district classification and the date and time of the hearing.
 - 2. In proceedings involving rezoning of land which abuts other municipalities or unincorporated areas of the county or a combination thereof, copies of the notice of public hearing shall be transmitted to the planning agency of such governmental unit abutting such land. In addition to notice by publication, a municipality may give notice of the hearing in such other manner as it may deem necessary or desirable.
 - 3. In proceedings that are not initiated by the property owner involving rezoning of land which may change the zoning classification, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and all property owners, as shown on the last assessment of the property, within three hundred feet of the property, to be rezoned.

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4. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed by Subsection C.5., of this Section:
 - a. A ten percent or more increase or decrease in the number of square feet or units that may be developed.
 - b. A ten percent or more increase or reduction in the allowable height of buildings.
 - c. An increase or reduction in the allowable number of stories of buildings.
 - d. A ten percent or more increase or decrease in setback or open space requirements.
 - e. An increase or reduction in permitted uses.
5. In proceedings governed by Subsection C.4. of this Section, the municipality shall provide notice to real property owners pursuant to at least one of the following notification procedures:
 - a. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by changes.
 - b. If the Town issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the municipality shall include notice of such changes with such utility bills or other mailings.
 - c. The Town shall publish such changes prior to the first hearing on such changes in a newspaper of general circulation in the Town. The changes shall be published in a "display ad" covering not less than one-eighth of a full page.
6. If notice is provided pursuant to Subdivisions (b) or (c) of Paragraph (5), the municipality shall also send notice by first class mail to persons who register their names and addresses with the municipality as being interested in receiving such notice. The municipality may charge a fee not to exceed five dollars per year for providing this service and may adopt procedures to implement this provision.
7. Notwithstanding the notice requirements set forth in Subsection C.4. of this Section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of a municipality for which the notice was given.

D. Commission Action.

1. Upon receipt of any complete application for amendment, the Community Development Director shall fix a reasonable time for the hearing of the proposed zone change, amendment, or addition and shall give notice in accordance with the Public Notice Requirements Deadline in Section 2.01 C of this Ordinance. The Commission may for any reason, when it deems such action necessary or desirable, continue such hearing to a time and certain place. Within sixty (60) days after the date of the original hearing, the Commission shall render its decision in the form of a written recommendation to the Council. The recommendation shall include the rationale for the recommendation. However, if the Commission is not able to make a recommendation to the Council at the

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continued meeting and the applicant does not consent to a further continuance, the matter shall be automatically forwarded to the Council with a recommendation for denial.

2. Prior to publishing a petitioned zoning map change, the Commission may, on its own motion, delimit or extend the boundaries of such area, so as to constitute a more reasonable zone district boundary.
3. In the case of proposed amendments which are initiated by the Commission, the Commission shall hold a public hearing as required by this section and shall either:
 - a. Transmit such proposal to the Council which shall thereupon proceed as set forth herein for any other amendment; or
 - b. Vote to quash the Commission initiated proposal, in which case no further action need be taken by the Commission or Council.
4. The Commission may recommend to the Council that a time limit be established for the development of the proposal for which a rezoning is conditionally approved.

E. Council Action.

1. Once the Commission has held a public hearing, the Council may adopt the recommendations of the Commission without holding a public hearing if there is no objection, request for public hearing, or other protest. The Council shall hold a public hearing if requested by the party aggrieved or any member of the public or of the Council. Notice of the time and place of the hearing shall be given in the time and manner provided for the giving of notice of the hearing by the Commission as specified in subsection (C). In addition, the Town may give notice of the hearing in such other manner as it may deem necessary or desirable.
2. If the owners of twenty (20) percent or more either of the area of the lots included in a proposed change, or of those immediately adjacent in the rear or any side thereof extending one hundred and fifty (150) feet therefrom, or of those directly opposite thereto extending one hundred and fifty (150) feet from the street frontage of the opposite lots, file a protest in writing against a proposed amendment, it shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the Council. If any members of the Council are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the Council, providing that such required number of votes shall in no event be less than a majority of the full membership of the Town Council.
3. If the Council's recommendation is to overrule the recommendation of the Commission, such decision shall only require the vote of the majority of the members of the Council voting on the question]
4. The Council shall not make any changes in any proposed zoning district boundaries or zoning district classification recommended by the Commission until such proposed changes have been referred back to the Commission for a report. Failure of the Commission to file a report back to the Council within a specified time response period, shall be deemed to be approval of the proposed changes. The specified time period for a Commission response shall be fifteen (15) days from the date of receipt of the recommended change(s), unless the

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Commission requests and the Council grants an extension of an additional fifteen (15) days.

5. At the time of rezoning, the Council may establish a schedule for development of the specific use or uses for which rezoning is requested.
- F. Reconsideration of Denied Amendments.** In the event that a petition for an amendment is denied by the Council, or is withdrawn after the Commission hearing, the Commission shall not consider the petition or any other petition for the same amendment of this ordinance as it applies to the same property described in the original petition, or any part thereof, within a period of one (1) year from the date of such denial action, or withdrawal unless the conditions, upon which the original denial or withdrawal was based, have changed.
- G. Exceptions.** In the event that a request for amendment concerns only the amendment of general requirements of this ordinance, no signature of affected property owners or posting of property shall be required; however, there shall be compliance with all other provisions of this section.
- H. Exceptional Procedures for Rezoning Land to the Open Space Recreational (OSR) or Open Space Conservation (OSC) Zoning Districts.** In addition to the procedural regulations contained in this Chapter, all of the following procedures are required to be met prior to rezoning land to either the OSR or OSC Zoning Districts:
 1. The property owner(s) and any lienholders of record shall specifically request, in writing, that the zoning district designation be applied to their property.
 2. The property owner(s) and any lienholders of record shall sign a forbearance agreement that would be recorded in the office of the Maricopa County Recorder, stating that:
 - a. if the property is to be rezoned to the Open Space Recreational Zoning District, that the owner has voluntarily requested a zoning district designation that provides for little economic use of the property and that the owner is fully informed and aware of this fact.
 - b. if the property is to be rezoned to the Open Space Conservation Zoning District, that the owner has voluntarily requested a zoning district designation that provides for no viable economic use of the property and that the owner is fully informed and aware of this fact.

Section 2.02 Special Use Permits

- A. Purpose.** Every zoning district contains certain buildings, structures and uses of land which are normal and complementary to permitted uses in the district, but which, by reason of their typical physical or operational characteristics, influence on the traffic function of adjoining streets, or similar conditions, are often incompatible with adjacent activities and uses. It is the intent of this ordinance to permit special uses in appropriate zoning districts, but only in specific locations within such districts that can be designed and developed in a manner which assures maximum compatibility with adjoining uses. It is the purpose of this section to establish principles and procedures essential to proper guidance and control of such uses.

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B. General Regulations.

1. Zoning district regulations established elsewhere in this ordinance specify that certain buildings, structures and uses of land may be allowed by the Town Council as conditional uses in a given district subject to the provisions of this section and to requirements set forth in district regulations. The Town Council is empowered to grant and to deny applications for use permits and to impose reasonable conditions upon them.
2. Any building, structure or use existing on the effective date of this ordinance which is reclassified as a special use by this ordinance for the district in which it is located shall be considered as meeting the conditions which would otherwise be imposed upon such use by this ordinance, and its continuance shall not be subject to issuance of a special use permit; provided, however, to the extent that such use fails to conform to the requirements of this ordinance, it shall be considered nonconforming as described in section 4.01, and its continuance shall be governed by all nonconforming use regulations applicable thereto.
3. Every special use permit issued shall be applicable only to the specific use and to the specific property for which it is issued. Upon completion and final inspection by the Zoning Administrator of any authorized structures, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the special use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance of special conditions imposed by the permit, as well as the compliance with other provisions of this ordinance, shall become the responsibility of the property owner.

- C. Special Use Permit Application.** Application for a use permit shall be filed with the Community Development Department on a form prescribed by the Community Development Director. The application shall be forwarded to the Planning and Zoning Commission by the Zoning Administrator, and when required by the Zoning Administrator, shall be accompanied by a detailed site plan prepared in accordance with Section 2.04 showing all information necessary to demonstrate that the proposed use will comply with all special conditions as well as other regulations and requirements of this ordinance. An applicant shall furnish the Commission with any additional information it may consider relevant to investigation of the case.

D. Commission Action and Findings.

1. It is the express intent of this ordinance that any use for which a special use permit is required shall be permitted in the particular zoning district, provided that all special conditions and requirements of this ordinance are met. Therefore, the action of the Commission shall be one of recommending approval or denial to the Town Council based upon its judgment as to whether the specified conditions have been or will be met. The Commission shall consider not only the nature of the use and the special conditions influencing its location in the particular district, but also the proposed location of buildings, parking and other facilities within the site, the amount of traffic likely to be generated and how it will be accommodated, and the influence that such factors are likely to exert on adjoining properties. The Commission may make such suggestions to the Town Council concerning ways a proposed project may be acceptable and compatible to the area.
2. Notice of the nature of the special use permit application and the date of the meeting at which it will be considered shall be posted on the property and shall be mailed to the owners of all real property within three hundred (300) feet of the external boundaries of the property

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for which application is made. The applicant shall be responsible for providing the names and addresses of these owners.

3. The Commission shall consider the application at the first regular meeting after the proper advertising procedures and period have been completed. The Commission, at this regularly scheduled meeting, shall either (1) make a recommendation to the Town Council, or continue the matter to a specified date (but not longer than sixty (60) days from the date of the original hearing). Within sixty (60) days after the date of the original hearing, the Commission shall render its decision in the form of a written recommendation to the Council. The recommendation shall include the rationale for the recommendation. However, if the Commission is not able to make a recommendation to the Council at the continued meeting and the applicant does not consent to a further continuance, the matter shall be automatically forwarded to the Council with a recommendation for denial
4. It shall be the responsibility of the applicant to maintain the posting. The notice shall set forth the time and place of the hearing and include a general explanation of the matter to be considered and a general description of the area affected.
5. In order to recommend approval of any use permit, the findings of the Commission must be that the establishment, maintenance, or operation of the use or building applied for will not be detrimental to the public health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, nor shall it be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the town.
6. The Commission may recommend to the Town Council such conditions in connection with the use permit as it deems appropriate to secure the intent and purposes of this ordinance and may recommend such guarantees and evidence that such conditions are being or will be followed.
7. If the Commission finds that the application and supporting data do not indicate that all applicable conditions and requirements of this ordinance will be met, it may recommend denial of the special use permit. The Commission recommendation shall be mailed to the applicant at the address shown on the application.
8. Upon conclusion of the Commission's hearing, the Commission's recommendation shall be forwarded to the Town Council along with the application materials, staff report, written comments from the public, and minutes of the hearing.

E. Council Action and Findings.

1. When the Town Council receives a recommendation from the Planning and Zoning Commission concerning a Special Use Permit application, it shall hear the request at the scheduled date and time specified in accordance to the Arizona Open Meeting Law, but no later than the next regularly scheduled meeting held at least eight (8) days after the Commission recommendation is received. The Council may adopt the Commission's recommendation, approve the Special Use Permit request with the conditions it deems appropriate, or deny the Special Use Permit.
2. The Council's decision shall be final and shall become effective immediately. Notice of the decision shall forthwith be mailed to the applicant at the address shown in the application.

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F. Time Limits.

1. The Council may establish a time limitation for special use permits. A building permit for the construction of any improvements allowed by any special use permit issued by the Town Council shall be secured within six (6) months from the date of approval. Any lapsing of the building permit prior to completion of the improvements will cause the Special Use Permit to become null and void. Prior to the termination of this time limit, the applicant may make a written request to the Town Council and the Council may reconsider said use permit to determine if the permit should be reissued for an additional time period or be terminated. There shall be no use permit fee for this extension request.
2. No person shall reapply for the same or substantially the same use permit on the same or substantially the same plot, lot, or parcel of land within a period of one (1) year from the date of denial of said use permit.

G. Revocation.

1. Special use permits granted in accordance with the provisions of this ordinance may be revoked by the Town Council, if any of the conditions or terms of the permit are violated or if any law or ordinance is violated in connection therewith. The Zoning Administrator shall notify the permittee of a violation of a special use permit, in writing. If the violation is not remedied or the remedy is not substantially begun in the opinion of the Zoning Administrator within ten (10) days after notification, the owner/tenant should be notified that the Town Council will consider revocation of the permit at its next meeting.
2. Any special use permit issued by the Town Council shall be considered null and void if construction does not conform to the originally approved site plan. Any requests for deviations from the originally approved site plan shall be processed as a new use permit.

- H. Fee.** The application for a special use permit shall be accompanied by a filing fee in an amount established by a schedule adopted by resolution of the Council and filed in the office of the Town Clerk. No part of the filing fee shall be refundable. Payment of the filing fee shall be waived when the petitioner is the town, county, school district, state or federal government.

Section 2.03 Temporary Use Permits

- A. Purpose.** Every zoning district contains certain buildings, structures and uses of land which are normal and complementary to permitted uses in the district, but which, by reason of their typical physical or operational characteristics, influence on the traffic function of adjoining streets, or similar conditions, are often incompatible with adjacent activities and uses. It is the intent of this ordinance to permit temporary uses in appropriate zoning districts, but only in specific locations within such districts that can be designed and developed in a manner which assures maximum compatibility with adjoining uses. It is the purpose of this section to establish principles and procedures essential to proper guidance and control of such uses.

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B. General Regulations.

1. Zoning district regulations established elsewhere in this ordinance specify that certain buildings, structures and uses of land may be allowed as temporary uses in a given district subject to the provisions of this section and to requirements set forth in district regulations. The staff is empowered to grant applications for temporary use permits if no objections are received within the prescribed advertising period. The staff may impose reasonable conditions upon such temporary use permits.
2. Any building, structure or use, which existed in conformance to all applicable the laws and ordinances on the effective date of this ordinance, which is reclassified as a temporary use by this ordinance for the district in which it is located shall be considered as meeting the conditions which would otherwise be imposed upon such use by this ordinance. The continuance of such building or use shall not be subject to issuance of a temporary use permit; provided, however, to the extent that such use fails to conform to the requirements of this ordinance, it shall be considered nonconforming as described in section 4.01, and its continuance shall be governed by all nonconforming use regulations applicable thereto.
3. Every temporary use permit issued shall be applicable only to the specific use and to the specific property for which it is issued. Upon completion and final inspection by the Zoning Administrator of any authorized structures, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the temporary use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance of special conditions imposed by the permit, as well as the compliance with other provisions of this ordinance, shall become the responsibility of the property owner.

- C. Temporary Use Permit Application.** Application for a temporary use permit shall be filed with the Community Development Department on a form prescribed by the Community Development Director. The application shall be accompanied by a detailed site plan prepared in accordance with Section 2.04 showing all information necessary to demonstrate that the proposed use will comply with all special conditions as well as other regulations and requirements of this ordinance. An applicant shall furnish the staff with any additional information the staff may consider relevant to investigation of the case.

D. Action and Findings.

1. It is the express intent of this ordinance that any use for which a temporary use permit is required shall be permitted in the particular zoning district, provided that all special conditions and requirements of this ordinance are met. Therefore, the action of the staff shall be one of approval if the applicant agrees to conform to all applicable regulations and the conditions placed upon the permit by the staff. If there is any objection to the temporary use permit application or to the conditions stipulated by staff, the matter shall be appealed to the Town Council. The Town Council shall determine if the temporary use permit is to be granted based upon its judgment as to whether the specified conditions have been or will be met; and whether such use can be compatible with the neighborhood and area where it is located. The staff and Council shall consider not only the nature of the use and the special conditions influencing its location in the particular district, but also the proposed location of buildings, parking and other facilities within the site, the amount of traffic likely to be generated and how it will be accommodated, and the influence that such factors are likely to exert on adjoining properties.

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2. Notice of the nature of the temporary use permit application and the date in which any objections must be received shall be posted on the property and shall be mailed to the owners of all real property within three hundred (300) feet of the external boundaries of the property for which application is made. The advertising period shall be for at least ten (10) calendar days. The applicant shall be responsible for providing the names and addresses of these owners on postage paid, first-class legal sized envelopes. It shall be the responsibility of the applicant to maintain the posting.
3. Objections to any proposed temporary use permit shall be in writing. Such objections shall state the reason(s) for the objection and protest. The written objection must also contain the name, address, telephone number, and signature of the objector.
4. If there is an written objection received by the closing date of the advertising period, the Council shall consider the application at the first regular meeting held not less than fifteen (15) days after receipt of said protest. At this meeting, the Town Council may render decision on the matter or continue the matter to a specified date (but not later than the next regularly scheduled meeting).
5. In order to grant a temporary use permit, the findings of the Council must be that the establishment, maintenance, or operation of the use applied for will not be detrimental to the public health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, nor shall it be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the town.
6. The Council may designate such conditions in connection with the temporary use permit as it deems appropriate to secure the intent and purposes of this ordinance and may require such guarantees and evidence that the applicant will comply with the conditions placed upon the temporary use permit.

E. Time Limits.

1. Temporary use permits become effective the day after the advertising period, if no written objections are received.
2. If any written protest is received, a temporary use permit issued by the Town Council is effective either the day after the Council's decision if no conditions for operation are outstanding; or, the day after any outstanding conditions are met.
3. A time limitation for temporary use permits shall be made at the time of issuance. At no time shall a temporary use permit be granted for more than two (2) years. In no case, shall a termination date of a temporary use permit be automatically extended as a result of a delay on the applicant's part to comply to the conditions stipulated in the temporary use permit or in securing a building permit.
4. A building permit for the construction of any improvements allowed by any temporary use permit issued by the staff or Town Council shall be secured within six (6) months from the date of approval. Any lapsing of the building permit prior to completion of the improvements will cause the temporary use permit to become null and void. Prior to the termination of this time limit, the staff or Town Council (whichever issue the temporary use permit) may reconsider said temporary use permit to determine if the permit should be reissued for an additional time period or be terminated.

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5. No person shall reapply for the same or substantially the same temporary use permit on the same or substantially the same plot, lot, or parcel of land within a period of one (1) year from the date of denial of said use permit.

F. Revocation.

1. Temporary use permits granted in accordance with the provisions of this ordinance may be revoked by the Town Council, if any of the conditions or terms of the permit are violated or if any law or ordinance is violated in connection therewith. The Zoning Administrator shall notify the permittee of a violation of a temporary use permit, in writing. If the violation is not remedied or the remedy is not substantially begun in the opinion of the Zoning Administrator within ten (10) days after notification, the owner/tenant should be notified that the Town Council will consider revocation of the permit at its next meeting.
2. Any temporary use permit shall be considered null and void if construction does not conform to the originally approved site plan. Any requests for deviations from the originally approved site plan shall be processed as a new temporary use permit.

- G. Fee.** The application for a temporary use permit shall be accompanied by a filing fee in an amount established by a schedule adopted by resolution of the Council and filed in the office of the Town Clerk. No part of the filing fee shall be refundable. Payment of the filing fee shall be waived when the petitioner is the town, county, school district, state or federal government.

Section 2.04 Concept Plan Review

- A. Purpose.** The purpose of the Concept Plan Review is to enable the Planning and Zoning Commission and the Town Council, upon appeal, to review and approve concept plans for all non-residential developments and multi-family developments having five or more dwelling units prior to building permit approval. The Planning and Zoning Commission shall make a finding that the proposed development conforms to the intent and provisions of this ordinance and all other relevant Town ordinances.
- B. Application For Concept Plan Approval.** A request for Concept Plan approval shall be filed with the Community Development Department on a form prescribed by the Community Development Director. The request for approval shall be accompanied by ten (10) identical copies of the plan, which shall be on one or more sheets of paper measuring not more than twenty-four (24) by thirty-six (36) inches, drawn to a scale not smaller than twenty (20) feet to the inch, prepared by an Arizona registered land surveyor or Arizona registered civil engineer which show the those features as required in Section 2.05 B subsections 1, 3, 5, 7, 8, 10, 11, 12, 16 and 20. The applicant shall also, upon request, provide to the Town one legible set of 8 ½" x 11" reductions of the submitted plans.
- C. Fee.** The application for a Concept Plan Review shall be accompanied by a filing fee, which shall include Town staff review time costs, in an amount established by a schedule adopted by resolution of the Council and filed in the offices of the Town Clerk. No part of the filing fee shall be refundable. Payment of the filing fee may be waived when the petitioner is the town, county, state, school district, or federal government.

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- D. Review Procedures.** The Planning and Zoning Commission shall review and consider approval of a Concept Plan within 20 working days of a completed Concept Plan application. The Planning and Zoning Commission may approve, conditionally approve, request more time or deny said plan based on its compliance with all provisions of this ordinance or any other applicable Town ordinance. Upon concept plan approval the Town may issue a building permit for the site that is in substantial conformance, in the opinion of the Community Development Director, with the approved Concept Plan.
- E. Appeals.** Any applicant for Concept Plan approval who is dissatisfied or aggrieved by the decision of the Planning and Zoning Commission may appeal the Commission's decision to the Town Council. The Town Council may approve, conditionally approve, request more time or deny said plan based on its compliance with all provisions of this ordinance or any other applicable Town ordinance.
- F. Expiration of Plan Approval.**
1. One (1) year after the date of approval, a concept plan approval becomes void if a building permit has not been issued.
 2. If the applicant files for an extension prior to the approval becoming void, an extension may be granted by the approving body.

Section 2.05 Plan Review

- A. Purpose.** The purpose of the plan review is to enable the Community Development Department to make a finding that the proposed development conforms with the intent and provisions of this ordinance and all other town ordinances. The Department may be assisted in this determination by engineering department, utility companies, fire district, sanitary district, and other appropriate agencies in the form of written staff recommendations or stamps of approval. The provisions of this section shall apply to the permitted, temporary uses, and special uses as specified for each zoning district.
- B. Application For Plan Approval.** A request for plan approval shall be filed with the Community Development Director or designee, on a form prescribed by the Community Development Director. The request for approval shall be accompanied by two (2) identical copies of the plan. Each copy shall be on one or more sheets of paper measuring not more than twenty-four (24) by thirty-six (36) inches, drawn to a scale not smaller than twenty (20) feet to the inch, prepared by an Arizona registered land surveyor or Arizona registered civil engineer which show the following:
1. Legal description, property dimensions and heading, along with the name, address and telephone number of the owner, developer and designer.
 2. A topographic survey extending at least ten (10) feet beyond the exterior property line of the site. Contour interval shall not exceed two (2) feet within twenty (20) feet of any proposed improvement and five (5) foot intervals for the remainder of the lot or parcel.
 3. Scale of the site plan shall be not less than 1 inch equals 20 feet. For large scale projects, the Community Development Director may allow a different scale.

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4. If structures are proposed, show cross-sections through site and building at 25-foot intervals perpendicular to slope, giving percentage of slope at each, and showing exact heights of structures at each existing contour.
5. If structures are proposed, each floor level shall be shown with different shading with a legend giving grade or elevation of each level.
6. If a garage(s) is proposed, give proposed elevation or grade at garage floor and at existing street level at drive entry. Give percentage of total average slope, and percent and length of single steepest portion of driveway.
7. List the individual square footage of buildings, garages, patios, footprint, disturbance area.
8. Dot in all disturbed (or graded) areas and show the proposed method of final treatment. Indicate all retaining walls, showing the actual heights.
9. Show existing and proposed grades and drainage systems and how drainage is altered, how it is redirected to original channel and show that the requirements regarding storm water runoff and drainage have been met.
10. Size and dimensions of yards and space between buildings.
11. Location and height of walls and fences.
12. Location, number of spaces, dimensions, circulation patterns, and surface materials for all off-street parking and loading areas, driveways, access ways, and pedestrian walkways.
13. The location, dimensions, area, materials and lighting of signage.
14. Location and general nature of lighting.
15. Street dedications and improvements.
16. The size and locations of all existing and proposed public and private utilities. All easements must be shown and given in writing.
17. Natural features such as mesas, rock outcroppings, or streams and manmade features such as existing roads and structures, with indication as to which are to be retained and which are to be removed or altered.
18. Landscaping, including all surfacing material around buildings and in all open spaces.
19. A vicinity sketch showing the location of the site in relation to the surrounding street system. Adjacent properties and their uses shall be identified.
20. Any other information which the plan reviewer may find necessary to establish compliance with this and other ordinances.

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- C. Special Use Permit.** A special use permit shall be required for any person, firm, or corporation to undertake clearing or any work regulated by appendix Chapter 33 of the 1994 Uniform Building Code when not in accordance with a Plan of Development as determined by the Community Development Director.
- D. Plan of Development.** Prior to the issuance of a zoning clearance, a plan of development or grading plan shall be submitted to and approved by the Town Engineering Department, and the Community Development Department. The approval of the plan of development may include reasonable additional requirements as to grading, cut and fill, slope restoration, signs, vehicular ingress and egress, parking, lighting, setbacks of buildings, etc., to the extent that the noted purpose and objectives of this Chapter are maintained and ensured.
- E. Exception.** When, in the opinion of the Community Development Director, the nature of the permitted or special use is such that it would be unnecessary or economically unfeasible for the applicant to prepare a plan in accordance with the above requirements, the Community Development Director may waive certain of the above requirements, but in all cases the applicant will be required to prepare and submit a site plan drawn to scale.
- F. Fee.** The application for plan approval shall be accompanied by a filing fee, which shall include engineering plan review time costs, in an amount established by a schedule adopted by resolution of the Council and filed in the offices of the Town Clerk. No part of the filing fee shall be refundable. Payment of the filing fee may be waived when the petitioner is the town, county, state, school district, or federal government.
- G. Review Procedures.**
1. The Community Development Department shall have ten (10) working days from the date of submission of a plan application to review said plan and approve, conditionally approve, request more time or reject said plan based on its compliance with all provisions of this ordinance, all other applicable ordinances, and master plans of the Town of Fountain Hills, and to notify the applicant of the Department's decision in writing. If, however, the Community Development Director wishes to obtain the opinion of the Planning and Zoning Commission, the Director may forward the plan to the Commission for action at its next regular meeting to be held at least seven (7) days after such action. In such case, the Community Development Director must render a decision within five (5) days after Commission action. In the event of denial, the decision shall set forth in detail the reasons for denial, or in the event of conditional approval, the changes or additions which are necessary to make the plan acceptable.
 2. All copies of the approved plan, with any conditions shown thereon or attached thereto, shall be dated and signed by the Community Development Director. One copy of said approved plan and conditions shall be mailed to the applicant, and one copy shall be filed with the Building Inspector.
- H. Appeals.** Any applicant for plan approval who is dissatisfied or aggrieved by the decision of the Community Development Director may appeal such decision to the Board of Adjustment by filing a written notice of appeal with the Community Development Department in accordance the procedures outlined in Section 2.04 of this Ordinance.

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I. Expiration of Plan Approval.

1. One (1) year after the date of approval, a plan approval becomes void if a building permit has not been issued.
2. If the applicant files for an extension prior to the approval becoming void, an extension may be granted by the approving bodies.

J. Violation and Enforcement.

1. Prior to the issuance of a building permit, the Building Inspector shall ascertain that the Zoning Administrator and other reviewing agencies have approved the plans which are in conformance with those presented with the building permit application and that the time limitations imposed by this ordinance have not elapsed.
2. The Building Inspector shall ensure that all matters are undertaken according to the conditions of the approved plan. In the event of a violation, the Building Inspector shall notify the permittee, by mail or written report, that he is in violation of the conditions of the approved plan. If the violation is not cured or a cure is not substantially begun in the opinion of the Building Inspector within ten (10) days after notification, the building permit shall be revoked and shall be null and void.

Section 2.06 Planned Unit Developments

A. Purpose.

The principal purpose of a Planned Unit Development (PUD) is to allow more creative and imaginative design for land developments than is possible under the more conventional zoning regulations. In this regard, flexibility to setback, lot coverage, lot size, and other development characteristics may be granted through the planned unit development process. The planned unit development provisions allow the Town to establish a specific set of parameters for the development of land and supporting infrastructure, when certain criteria are met.

B. Minimum Standards. As a minimum, a planned unit development project must meet the following standards:

1. **Density of Development.** The density of the project and total number of lots must be able to meet the standards of the existing underlying zoning designation and land disturbance regulations, without a planned unit development.
2. **Size of Development.** The minimum land area for a Planned Unit Development shall be five (5) acres.

C. Minimum Criteria for Consideration. In order for a Planned Unit Development application to be considered, at least one of the following criteria must be met:

1. **Preservation of natural features.** In addition to the hillside areas required to be set aside under the Hillside Standards of the Zoning Code and Subdivision Ordinance, land containing certain natural features of intrinsic value may be made subject to a protection

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easement, either a Natural Area Open Space easement (NAOS), or a Hillside Protection Easement (HPE). Natural features of intrinsic value include major washes (arroyos), stands of significant native vegetation, topographic and scenic natural features (including rock formations), provided such features are left in their undisturbed natural state. Significant native vegetation means saguaro and other native cacti, ocotillo and trees indigenous to the Sonoran Desert. Preservation of natural features will ordinarily dictate an innovative site plan, wherein the lot and street patterns are in harmony with the topography and the natural features to be preserved. Through traffic will be discouraged in order to preserve the integrity of the terrain and the privacy of the residents of the development.

In order to encourage and make possible the design features described in this sub-paragraph, relief may be granted on individual lots (subject to the Limits of Exceptions in Paragraph D of this Section) as follows: reduced setbacks, reduced lot size, reduced lot width, increased lot coverage, as necessary to accomplish the above-prescribed purposes.

2. **Protection of environmentally-sensitive areas.** Aside from those areas warranting protection under an easement, there exist undeveloped parcels meeting the minimum standards for Size of Development (Paragraph B.2. of this Section) which contain portions that are significantly more sensitive to development than the remainder of the parcel. This may be due to a number of factors, such as: relative elevation, scenic vistas, topography, drainage patterns, soil stability, vegetation, wildlife habitat, proximity to other development or infrastructure, prior land disturbance to remainder of parcel, etc. Such situations may call for density transfers, wherein density of development in the more sensitive areas is decreased, while density of development in the less sensitive areas is correspondingly increased.

In order to encourage a concentration of development in the less sensitive areas, transfer of density and clustering of homesites is permissible within a Planned Unit Development. The overall density of development must conform to the minimum standards set out in Paragraph B. of this Section. An additional requirement is that an open space be set aside (through OSR zoning or by easement) equivalent in size to the number of homesites in the receptor area multiplied by 1100 square feet. To accommodate the increased density and/or clustering of homesites, additional relief may be granted within the receptor area (subject to the Limits of Exceptions in Paragraph D of this Section) as follows: reduced setbacks, reduced lot sizes, reduced lot widths, increased lot coverage.

3. **Provision of usable open space.** The provision of common open space which is distinguishable by its quantity or quality and which is readily accessible to the residents of the development. The minimum amount of useable open space required if this criterion is being used to fulfill the minimum requirements for a planned unit development is 2200 square feet per lot platted in the development. This provision is also over and above open space required to be set aside as a result of the Hillside Standards of the Zoning Code and Subdivision Regulations. In addition to the dedication of common open space, that space shall either provide *significant interior amenities* (i.e., private recreational facilities such tennis courts, recreation centers, bike paths and trails, swimming facilities and turf areas that are readily accessible to the residents of the development) or *substantial public benefit* (i.e., provision of public facilities that are both unusual in character and serve the needs of an area greater than the immediate development. The Planning and Zoning Commission, subject to appeal to the Town Council, shall be the determinant of compliance with the above required stipulations.

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While the overall density of development must conform to the minimum standards set out in Paragraph B of this Section, a quid pro quo negotiation may be established to provide for mitigation of certain development standards (subject to the limits of Exceptions in Paragraph D of this Section) in order to facilitate the creation of the desired open space. These include: reduced setbacks, reduced lot sizes, reduced lot widths, increased lot coverage, as required.

D. Limits of Exceptions. Although the Planned Unit Development process will allow a developer to receive alternatives to the underlying zoning district requirements, the alterations shall be limited to the following:

1. Minimum Lot Size: The smallest lot shall not be less than 80 percent of minimum lot size of base zoning district.
2. Minimum Undisturbed Areas with a slope of 15 percent Hillside Area: or greater, less lot coverage percentage.
3. Minimum Setbacks: As negotiated. At no time shall a front yard be less than twenty (20) feet; the side yard distance between two (2) buildings be less than twice the minimum side yard setback requirement; and the minimum distance between the rear of two buildings be less than twice the minimum rear yard setback requirements.
4. Maximum Height: Underlying zoning district limitation.
5. Maximum Lot Coverage: Not to exceed 50 percent.
6. Minimum Lot Width: A flag lot shall not be less than 30 feet in width.

E. Review and Report Procedures.

A concept plan may be submitted and reviewed by the Planning and Zoning Commission and Town Council in order for a developer to receive input from the Commission and Council prior to preparing a precise plan. Prior to any "PUD" being approved, precise plans shall be submitted to both the Planning and Zoning Commission and the Town Council and approved by the Town Council. The following procedures shall be followed for review and report:

1. The owners of the property or their agents may submit to the Commission and Town Council a conceptual plan to develop the site as a Planned Unit Development.
2. If the applicant chooses to submit a concept plan, the concept plan shall first be referred to the Commission for its review, a public hearing, and submission of report and recommendation to the Town Council. Notice and procedure for public hearing shall conform with the procedures prescribed in Section 2.01 C. of this Chapter.
3. The Commission, having held a public hearing, shall then present its report and recommendation and the concept plan to the Town Council for consideration and public hearing, if required. Notice and procedure for public hearing shall conform with the procedures prescribed in Section 2.01 C. of this Chapter. Within sixty (60) days after the date of the original hearing, the Commission shall render its decision in the form of a written recommendation to the Council. The recommendation shall include the rationale for the

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recommendation. However, if the Commission is not able to make a recommendation to the Council at the continued meeting and the applicant does not consent to a further continuance, the matter shall be automatically forwarded to the Council with a recommendation for denial.

4. The recommendation of the Commission shall include the reasons for the recommended approval or disapproval of the concept plan. If the concept plan is recommended for approval, specific evidence and facts showing that the plan meets the requirements of the regulations for the zoning district are to be contained in the Commission report.
5. The recommendation of the Commission may include reasonable additional requirements as to the elements of the concept plan.
6. Upon approval of a concept plan, the owners of the property or their agents may submit to the Town Council a precise plan of development in accordance with the approved concept plan.
7. A precise plan shall be processed in the same manner as concept plans. If the owners of the property or agents for development of the "PUD" elect to forego the concept plan process, they may submit the precise plan for approval without first submitting a concept plan.
8. Amendments to any Planned Unit Development shall be processed through the same public hearing process as required in this Chapter for the approval of a Planned Unit Development.
9. Concept Plan approval is valid for six (6) months and Precise Plan approval is valid for one (1) year from the date of approval by the Town Council.

F. Required Plan Submittal.

Accompanying any request by an owner or agent for concept plan approval, there shall be provided a report consisting of maps, tables, and explanatory text. There shall be at least ten (10) identical copies of the plan maps on twenty-four (24) inches by thirty-six (36) inches and fifteen (15) copies of the plan maps on eight and one-half (8 1/2) inches by eleven (11) inches. The plans shall be drawn to scale. The scale on the twenty-four (24) inch by thirty-six (36) inch sheets shall be of a scale not smaller than forty (40) feet to the inch. The Planned Unit Development concept plan map shall include the following information as a minimum:

1. Designation of the various categories of proposed land uses including designation of areas proposed for Unit Plan of Development and other Special Uses.
2. General arrangement of arterial streets and collector streets.
3. General location and size of any proposed school sites, parks and common areas.
4. Methods proposed for water supply, sewage disposal, fire protection, drainage and protection from floods.
5. Sequential phasing of uses and major improvements.
6. Major geographical features, including but not limited to mountains, valleys, rivers, major washes, and major highways.

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7. Any additional information requested by staff, the Commission or Council that they deem necessary in order to carry out the purpose and intent of the Planned Unit Development.
8. An owner or agent shall also submit a report in narrative form in support of the proposed concept plans. The narrative portion of the report shall contain at least the following information.
 - a. Names, addresses and telephone numbers of the property owner, the developer, consultants, and engineers.
 - b. Any design guidelines proposed.
 - c. Timing and phasing of the project.
 - d. Landscaping requirements.
 - e. Proposal for public ownership and/or operation of and facilities in the development.
 - f. If applicable, a proposed development agreement.

G. Precise Plan of Development.

Upon approval of a concept plan, and prior to development of the site, the owners or agents of property within PUD shall submit a Precise Plan of Development consistent with the approved concept plan and which includes all of the reports, information and exhibits required of the approved concept plan, but in a final precise form. Under certain circumstances where, in the opinion of the Community Development Director, one or more elements of the plan are such that it would be unnecessary or economically unfeasible for the applicant to prepare a plan in accordance with the above requirements, those elements may be waived. Additionally, the Precise Plan shall include the following information:

1. Provide assurance that each lot is buildable with the regulations of the zoning regulations being sought.
2. Location and height of walls and fences.
3. Location, number of spaces, dimensions, circulation patterns, and surface materials for all off-street parking and loading areas, driveways, access ways, and pedestrian walkways.
4. The Comprehensive Sign Plan.
5. Location and general nature of lighting.
6. Existing and proposed grades and drainage systems.
7. Natural features such as vegetation, rock outcroppings, or washes, natural drainage courses, undisturbed open spaces, and manmade features such as existing roads and structures, with indication as to which are to be retained and which are to be removed or altered.
8. Landscaping, including all surfacing material around buildings and in all open spaces.

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9. A vicinity sketch showing the location of the site in relation to the surrounding street system. Adjacent properties and their uses shall be identified.
10. Location of any proposed common areas, clubhouses, recreational facilities and the proposed ownership and maintenance of such areas.
11. A copy of the proposed restrictive covenants.

H. Use Regulations. The Use Regulations which apply to property in any zoning district(s) in which the proposed Planned Unit Development is located shall remain the same as specified in the respective Zoning Districts, except that development in accordance with these procedures shall apply in all cases.

I. Other Regulations. The height, yard, intensity of use, parking, loading and unloading, and additional regulations which apply to property in any zoning district within a Planned Unit Development is located shall remain the same unless specifically authorized in the Planned Unit Development approval.

Section 2.07 Appeals and Variances

A. Appeals to the Board of Adjustment.

1. The Board of Adjustment may hear appeals made by any person who is aggrieved by the Zoning Administrator's interpretation or administration of this ordinance.
2. Board appeals shall be filed with the Zoning Administrator on forms furnished for that purpose within fifteen (15) days after the action appealed from, and shall specify the grounds therefor. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the appealed action is taken.
3. The appeal stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board that, by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by a restraining order granted by the Board, on application and notice to the Zoning Administrator, or by a court of record.
4. The Board shall hear the appeal at the next regularly scheduled meeting after the required advertising requirements have been fulfilled. Notice of the hearing shall be made by publishing a notice thereof in the official newspaper of the Town and by posting the property affected not less than fifteen (15) days prior to the hearing. The notice shall set forth the time and place of the hearing and include a general explanation of the matter to be considered.
5. The Board may reverse or affirm, wholly or partly, or modify the order, requirement or decision of the Zoning Administrator or other staff members, appealed from and make such order, requirement, decision or determination as it may deem necessary.
6. Any party may appear at the hearing in person or by agent or attorney. Parties shall have the right to present their case by oral or documentary evidence, to submit rebuttal evidence, and

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to conduct such inquiry of facts of opposing parties through the Chairman. The Chairman may limit or prevent questions or inquiries that are irrelevant or inappropriate. The Board shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence and in furtherance of this policy may limit cross-examination.

B. Variance.

1. Any aggrieved person may appeal to the Board of Adjustment for a variance from the terms of the Zoning Ordinance if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the Zoning Ordinance will deprive such property owner of privileges enjoyed by owners of other property of the same classification in the same Zoning District. Any variance granted shall be made subject to such conditions as will assure that the adjustment authority shall not constitute a granting of special privileges inconsistent with the limitations upon other properties in the zone in which such property is located.
2. The Board shall hear the appeal at the next regularly scheduled meeting after the required advertising requirements have been fulfilled. Notice of the hearing shall be made by publishing a notice thereof in the official newspaper of the Town and by posting the property affected not less than fifteen (15) days prior to the hearing. The notice shall set forth the time and place of the hearing and include a general explanation of the matter to be considered.
3. A variance shall not be granted by the Board unless the alleged hardship caused by literal interpretation of the provisions of this ordinance results in more than personal inconvenience and/or personal financial hardship, and is not the result of actions of the applicant.
4. In granting a variance, the Board shall impose such conditions and safeguards as are appropriate to ensure that the purpose and intent of this ordinance remain intact.
5. No nonconforming use or violations of this ordinance with respect to neighboring lands, structures, or buildings in the same Zoning District, and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for granting a variance.
6. Every variance shall be personal to the applicant therefor and shall be transferable and shall run with the land only after completion of any structure or structures authorized thereby.
7. Nothing herein contained shall be construed to empower the Board to change the terms of this ordinance, to authorize uses which violate any other Town ordinance, to affect changes in the zoning map, or to add to or change the uses permitted in any Zoning District.

- C. Appeals from the Board.** The decision of the Board shall be final, provided, however, that any person aggrieved by a decision of the Board may, at any time within thirty (30) days after the filing of the decision in the office of the Community Development Director, file a special action in the nature of certiorari with the Arizona Superior Court in and for Maricopa County for review of the Board's decision. Allowance of the writ shall not stay proceedings upon the decision appealed from, unless the court shall grant a restraining order. If a special action is brought for review of a matter in which the Board held a hearing which was not stenographically or electronically recorded, then upon request of any party to the special action or the court, the Board shall forthwith arrange a hearing in accordance with the public hearing and posting requirements for a variance for the purpose of causing a stenographic or electronic record to be made of the evidence presented by the parties. If

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evidence is presented at this hearing which is new or different from that originally presented the same shall be noted in the record by the Board Chairman.

D. Fees.

1. Upon filing an application for appeal, the appellant shall pay a filing fee in the amount established by a schedule adopted by resolution of the Council and filed in the offices of the Town Clerk. The filing fee may be waived when the petitioner is the Town, County, State, or Federal Government.
2. In the case of an appeal for a variance to more than one provision of this ordinance, the filing fee shall equal the total amount chargeable for all provisions as prescribed by the fee schedule.